



July 16, 2002

Mr. Martin A. Hubert  
Deputy Commissioner  
Texas Department of Agriculture  
P.O. Box 12847  
Austin, Texas 78711

OR2002-3884

Dear Mr. Hubert:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your agency's tracking number for this request is TDA-PIR-02-0194. Your request was assigned ID# 165720.

The Texas Department of Agriculture (the "department") received a request for applications for organic certification made by or on behalf of Red Corral Ranch, Ltd., for the years 1999, 2000, and 2001. You state that the department has released most of the requested information. The department takes no position as to whether the remaining information is excepted from public disclosure. The department believes, however, that the remaining information may implicate the proprietary interests of Red Corral Ranch, Ltd. ("Red Corral"). The department notified Red Corral of this request for information and of its right to submit arguments to this office as to why the information should not be released.<sup>1</sup> The department also submitted the requested information, which we have reviewed.

We first note that the department has not complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) provides that "[a] governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the tenth business day after the date of receiving the written request [for information]." Section 552.302 provides that "[i]f a governmental body does not request an attorney general

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<sup>1</sup>See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Gov't Code ch. 552 in certain circumstances).

decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.”

You state that the department received this request for information on January 23, 2002. The department then had ten business days in which to request this decision under section 552.301(b). The department requested this decision on May 10, 2002. Thus, the department has not complied with section 552.301. Therefore, the remaining requested information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from public disclosure. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or that third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).*

An interested third party has ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See Gov't Code § 552.305(d)(2)(B)*. As of the date of this decision, this office has received no correspondence from Red Corral. Therefore, Red Corral has not demonstrated any compelling reason to withhold any of the remaining requested information from public disclosure. *See also Gov't Code § 552.110(a)-(b)*; *Open Records Decision Nos. 552 at 5 (1990)* (attorney general will grant exception to disclosure under statutory predecessor to *Gov't Code § 552.110(a)* if governmental body takes no position, third party makes *prima facie* case that information qualifies as trade secret under section 757 of Restatement of Torts, and no argument is presented that rebuts claim as matter of law), 661 at 5-6 (1999) (business enterprise that claims exception for commercial or financial information under *Gov't Code § 552.110(b)* must show by specific factual evidence that release of requested information would cause that party substantial competitive harm). As Red Corral has not demonstrated that any of the remaining information must be withheld from disclosure, the information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. *Gov't Code § 552.301(f)*. If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id. § 552.324(b)*. In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id. § 552.353(b)(3), (c)*. If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

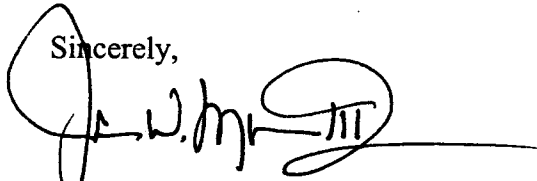
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a large, stylized flourish extending from the end of the signature.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 165720

Enc: Submitted documents

c: Mr. Gary B. Gibson  
Plunkett & Gibson, Inc.  
P.O. Box BH002  
San Antonio, Texas 78201  
(w/o enclosures)

Red Corral Ranch, Ltd.  
3704 Eastledge Drive  
Austin, Texas 78731  
(w/o enclosures)